

E1-18312



"Odom, Susan"  
<Susan.Odom@BNSF.com>  
09/14/2010 12:04 PM

To ""Warhank, Josef"" <jwarhank@mt.gov>  
cc ""David.Navecky@stb.dot.gov""  
<David.Navecky@stb.dot.gov>, "Clark, Kristy D"  
<Kristy.Clark@BNSF.com>, "Sims, John A"  
bcc

Subject RE: STB DOCKET NO. AB-6 (Sub-No.445X)

Josef:

David has outlined well the issue BNSF has encountered in our attempts to come to a resolution with the City of Great Falls Historic Preservation Office - it is impossible to mitigate adverse effects that have not been defined. Consequently, BNSF has been forced to agree to what we believe are unreasonable demands. Rationally, mitigation should correlate as directly as possible to the actual effects caused. We would like to state for the record that BNSF does not believe that granting a fee-free easement or providing funding for interpretive signage in an area \*beyond the APE\* in any way mitigates BNSF's inadvertent actions \*within the APE\*. However, if SHPO indeed determines in opposition to the consultant that an adverse effect exists, BNSF will honor its verbal agreement as documented in the MOA in order to close this transaction. Thank you for considering our position.  
Respectfully,

Susan Odom / Manager Network Strategy  
BNSF Railway Company  
817-352-6432 office  
682-429-0930 mobile

This message may be confidential and should be read or retained only by the intended recipient.

-----Original Message-----

From: David.Navecky@stb.dot.gov [mailto:David.Navecky@stb.dot.gov]  
Sent: Friday, September 10, 2010 9:28 AM  
To: Warhank, Josef  
Cc: Odom, Susan  
Subject: Re: STB DOCKET NO. AB-6 (Sub-No.445X)

Josef -

Thanks for your email.

As the lead Federal agency, I contacted the Advisory Council about this undertaking after receiving the draft MOA from BNSF last month. Although it will likely decline to participate, a final decision by the Advisory Council has not been made. The Advisory Council requested a copy of the SHPO's adverse effect determination.

Therein lies the STB's dilemma; the record for this undertaking is incomplete because it appears that much of the communication between SHPO and BNSF occurred via telephone. What we have in the record is listed below:

An historical report prepared by BNSF and supplied to SHPO in 2006.  
A May 8, 2006 letter from Damon Murdo, SHPO, Cultural Records Manager, stating that abandonment and salvaging of the rail line "may have an adverse effect on this historic site" and recommended that BNSF contact you in your capacity as Section 106 Compliance Officer.  
A BNSF record of conversation with you stating that "BNSF may need to

conduct a survey of the Line."

Transmittal of a survey report to you on April 11, 2007. In the survey report, the cultural resources consultant concluded that "the portion of [Site] 24CA264 within the project area is evaluated here as a non-contributing portion of this potentially National Register eligible property." Accordingly, the consultant's cover letter requested that the SHPO provide a letter of suggested mitigation or finding of no adverse effect.

A May 2, 2007 letter from SHPO noting that some of the rail line right-of-way had been sold; and thus, presented complications for Advisory Council involvement.

An August 17, 2010 email from BNSF to STB with a draft MOA for review.

The key missing item for the written record appears to be a determination by the SHPO that an adverse effect would occur with abandonment of the rail line (contrary to the consultant's recommendations); therefore, requiring the preparation of the MOA. Would it be possible for you to provide this determination to the STB by email reply? If so, the STB is prepared to concur with your determination, close the loop with the Advisory Council, make your requested changes to the MOA, and proceed with the MOA execution process.

Please let me know if you have any questions.

Thanks,

Dave  
Office of Environmental Analysis  
Surface Transportation Board  
202-245-0294

"Warhank, Josef"  
<jwarhank@mt.gov  
>

09/02/2010 03:56  
PM

"David.Navecky@stb.dot.gov"  
<David.Navecky@stb.dot.gov>

"Odom, Susan"  
<Susan.Odom@BNSF.com>

To

cc

Subject  
STB DOCKET NO. AB-6 (Sub-No.445X)

David,

We were ask by Susan Odom to pass along to you our thoughts on the subject MOA. We think that the fifth WHEREAS should be dropped because our signature will witness that we agree with the document. In its place you should mention that the Advisory Council has been ask to participate and indicated what their decision was. Federal Agencies must invite the ACHP to participate in MOA that mitigate adverse effects. We will not sign an MOA that has not been rum by the ACHP for this purpose. In Stipulation I (3), we think that a date should be added to indicate when that action would be completed. If the ACHP decides not to participate we would like to be the last party to sign and we would then make distribution.

Josef-